

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 14828, of the Republic of Turkey, pursuant to 11 DCMR 1001, for permission under Section 1002 to expand an existing chancery in a D/R-1-B District at premises 2523 Massachusetts Avenue, N.W., (Square 2505, Lots 15, 16, and 17).

HEARING DATE: July 13, 1988  
DECISION DATE: September 7, 1988

ORDER DISAPPROVING  
APPLICATION

The Foreign Missions Board of Zoning Adjustment has decided to disapprove this application. As is explained below, the basis for the Board's decision is that the size of the proposed chancery structure is not compatible with the prevalent scale of existing structures in the Massachusetts Avenue Historic District. Approval of the proposed structure would therefore not substantially comply with District of Columbia statutory provisions which govern historic preservation.

PROCEDURAL BACKGROUND

This application was filed on April 18, 1988. Pursuant to D.C. Code Sec. 5-1206(c)(3) (1988), the final determination of the Board must be made no later than October 18, 1988.

As a preliminary matter at the hearing, the Board considered the effect of the omission of the hearing date from the public hearing notices which the applicant posted on the premises. In light of the other methods by which the Board provided notice of the hearing, together with the evidence of extensive actual knowledge of the hearing and the substantial public participation in the proceeding, the Chairperson concluded that it would be fair and reasonable to proceed with the hearing.

As an additional preliminary matter to the public hearing, the Board determined to proceed to hear the case, and to reserve a ruling on its jurisdiction to decide the application.

At the conclusion of the public hearing on July 14, 1988, the Chairperson determined to refer the matter to the Historic Preservation Review Board ("HPRB") for a further report, and to the Mayor's Agent for D.C. Law 2-144 for a report, about historic preservation issues under D.C. Law 2-144. By letters dated July 18 and 19, 1988, respectively, the Board requested the further advice of HPRB and the advice of the Mayor's Agent about several specified issues. HPRB replied by letter dated August 4, 1988, and the Mayor's Agent replied by transmitting a copy of the opinion and order of the Mayor's Agent in H.P.A. No. 87-758, In Re: Turkish Chancery. On September 7, 1988, the applicant and Concerned Citizens for Kalorama, Inc., each filed comments upon the submission of the Mayor's Agent. Although the applicant disregarded the direction of the Board not to attach exhibits to its comments, the Board nonetheless accepted the comments.

At the public hearing and in papers filed with this Board, the applicant has suggested that the Board has acted improperly as follows: (1) by seeking the views of the Mayor's Agent; (2) by delegating its responsibility to the Mayor's Agent and allowing her to substitute her judgment for that of this Board; and (3) by effectively bringing about a series of invalid procedures which are claimed to invalidate this proceeding.

The Board rejects these contentions. The Board determined that its evaluation and determination of this application would be aided by the views of the Mayor's Agent as an officer with experience in historic preservation issues. The Board welcomes the receipt of those views, and they have in fact further clarified the historic preservation context of this application.

The procedure followed by the Mayor's Agent was fair and reasonable on its face. Moreover, this Board has conducted a rulemaking procedure, and it is through this Board's procedure, not that of the Mayor's Agent, that this decision is reached. Further, the dispositive decision and Order in this application are those of this Board.

This Board has not in form or fact delegated its authority and responsibility to other officers. As will be evident from the Board's discussion of the merits, which follows, the rationale of this Board in consideration of historic preservation issues has a substantially different focus from that of either HPRB or the Mayor's Agent.

#### THE MERITS

The Foreign Missions Board of Zoning Adjustment is directed by statute to determine whether to disapprove this

application solely on the basis of the six criteria which are set forth in D.C. Code Sec. 5-1206(d) (1988).

The Board has jurisdiction to hear and decide historic preservation issues which are presented by this application. The Board has carefully considered the contentions of the various participants about the appropriate role of this Board, other District agencies, and federal agencies with respect to historic preservation issues. D.C. Code Sec. 5-1206(d)(2) states in relevant part:

- (d) Any determination concerning the location of a chancery under subsection (b)(2) of this section... shall be based solely on the following criteria:

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- (2) Historic preservation, as determined by the Board of Zoning Adjustment in carrying out this section....

Although D.C. Code Sec. 5-1206 is not unambiguous in every aspect, there is no reasonable basis for doubting the authority and obligation of this Board to determine historic preservation issues which are presented by an application pursuant to Sec. 5-1206. By memorandum to this Board, dated May 9, 1988, the Deputy Corporation Counsel, Community Development Division, advised:

[A] specially constituted Board of Zoning Adjustment ("FMA-BZA") is statutorily charged with ensuring that the application of the Republic of Turkey to demolish and reconstruct its chancery in the District of Columbia is in substantial compliance with District of Columbia and federal regulations governing historic preservation.

This conclusion was supported by a well-reasoned and persuasive analysis. The Board concurs, and accordingly denies the Motion of Concerned Citizens for Kalorama to dismiss the application.

This Board's evaluation of the instant application must reasonably address the entire criteria of Sec. 5-1206(d), and weigh the various criteria as is reasonable on the basis of this particular application.

The suggestion has been made to the Board that its charge is to accord each criterion equal weight. But this cannot automatically be. The proceeding before this Board is a quasi-legislative rulemaking proceeding. As such, it is not governed by the mechanical application of a linear equation.

In any particular chancery application, four or more criteria may favor one result, whether disapproval or approval, while only one criterion may support the contrary result. Yet the one criterion, standing alone, may be so sufficiently preponderant as to be dispositive of the case. For example, in one application, the international obligation of the United States may weigh so heavily as to justify approval, even if the municipal interest and parking concerns strongly support disapproval. In another application, a parking or security shortcoming may alone outweigh all other criteria, and constrain the Board to disapprove an application which the federal interest and all other criteria would otherwise support.

Historic preservation issues are at the core of the opposition to this application. The Board recognizes and has considered the obligation of the United States to provide adequate and secure facilities for the Republic of Turkey. The Board is persuaded that the application would not merit disapproval on the basis of these or other federal interests, or parking or security issues. Nonetheless, the Board is persuaded to disapprove the application by historic preservation concerns and the strong municipal interest in historic preservation.

The site of the existing chancery structure and proposed new one is located in the Massachusetts Avenue Historic District. The existing structure has not been designated as an historic landmark, and this Board's conclusion of disapproval is not grounded upon preservation of the existing structure as a contributing element to the Massachusetts Avenue Historic District. Rather, as is set forth below, the Board's disapproval is squarely grounded upon the excessive size of the proposed new structure, in relation to the existing structures in the Historic District.

By subdividing three fifty-foot wide lots into one lot, the applicant would propose to build one structure, 126 feet wide, with two twelve-foot side yards. Three matter of right structures on the three separate lots could each be no more than 34 feet wide, and each could have two eight-foot side yards. Although HPRB was persuaded by its staff recommendation that the design of the proposed structure would evoke a residential scale, and incorporate and relate to the Massachusetts Avenue streetscape, this Board does not concur with that view. The design does not mitigate the actual excessive width in a way which effectively resolves the excessive mass of the proposed structure. This mass is particularly problematic in the Massachusetts Avenue Historic District, the character of which is largely defined by the overall sense of the streetscape. The width of the proposed structure does not share that common scale and

proportion which would successfully integrate it into the Massachusetts Avenue streetscape. This scale is especially predominant on the north side of Massachusetts Avenue.

The excessive scale can and should be corrected. The Board would be prepared to consider a revised proposal for a smaller structure. In an ordinary application, the Board would defer a final decision, and allow the applicant an opportunity to submit revised plans. In light of the time constraints of D.C. Code Sec. 5-1206(c)(3), that alternative is not practically available to the Board within the context of the instant application. On its merits as submitted and heard by the Board, the instant application fails to satisfy the criteria of D.C. Code Sec. 5-1206(d), considered as a whole and on the basis of the particular proposal.

Based upon the foregoing, it is ORDERED that the application is DISAPPROVED.

VOTE: 4-1 (John G. Parsons, Charles R. Norris, Paula L. Jewell, and Carrie L. Thornhill to disapprove; Reginald W. Griffith not to disapprove).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: \_\_\_\_\_

  
EDWARD L. CURRY  
Executive Director

FINAL DATE OF ORDER: \_\_\_\_\_

OCT 14 1988

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Government of the District of Columbia

ZONING COMMISSION



APPLICATION No. 14828

As Acting Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that a copy of the Order of the Board in the above numbered case, said Order dated OCT 14 1988, has been mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Lori Ward  
Preservation League  
1116 F Street, N.W., #405  
Wash., D.C. 20004

Penn Lupovich  
2458 Tracy Pl. N.W.  
Wash., D.C. 20008

Howard Berger  
Sheriden-Kalorama Historic Ass'n  
2144 Calif. St., N.W.  
Suite 812  
Washington, D.C. 20008

Whayne S. Quin, Esq.  
Wilkes, Artis Hedrick & Lane  
1666 K St., N.W.  
Suite 1100  
Wash. D.C. 20006

Peggy Robin  
Cleveland Park His. Society  
3021 Macomb St., N.W.  
Washington, D.C. 20015

Richard B. Nettler  
1800 K St., N.W.  
Suite 600  
Wash., D.C. 20006

D<sup>e</sup>gna Clark  
2440 Kalorama Rd. N.W.  
Washington, D.C. 20008

Ronald S. Mlotek  
Office of Foreign Missions  
U.S. Dept. of State  
Wash., D.C. 20520

Elizabeth Burton  
2339 Mass. Ave., N.W.  
Washington, D.C. 20008

Lucy Burrows  
2519 Mass. Ave., N.W.  
D.C. 20008

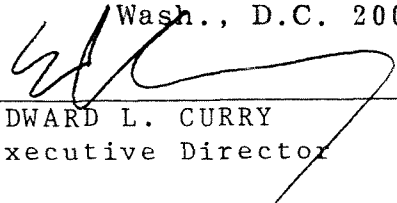
Joseph Passaneau  
2114 O Street, N.W.  
Washington, D.C. 20007

Justine M. Kingham  
2432 Tracy Pl, N.W.  
Wash., D.C. 20008

Edith Darlington  
2456 Tracy Pl., N.W.  
Washington, D.C. 20008

Geoffrey B. Baker  
Sheridan Kalorama  
Neighborhood Assn.  
2410 Wyoming Ave., N.W.  
Wash., D.C. 20008

Jean Lindley, Chairperson  
ANC 1D  
1900 Conn. Ave., N.W.  
Wash, D.C. 20009

  
EDWARD L. CURRY  
Executive Director

DATE: OCT 14 1988